

Embassy in that country. Any such written request and its envelope must be plainly marked “FOIA Request.”

(c) Only signed original (as opposed to electronically transmitted) requests are acceptable for procedures pursuant to paragraphs (a) and (b) of this section. Telephoned requests, or in-person requests other than to the Public Reading Room, cannot be accepted. If a written request not properly marked “FOIA Request” on both the letter and envelope is thereby delayed in reaching the Chief, Office of Customer Outreach and Oversight Staff, such request will not be deemed received by USAID until actually received by that official. In the event of such a delay, the person making the request will be furnished a notice of the effective date of receipt.

§ 212.34 Procedures for responding to requests for records.

(a) Upon receipt by the Chief, Office of Customer Outreach and Oversight Staff, of a reasonably specific request made pursuant to § 212.33 of this part, a maximum of ten working days will normally be taken to determine to what extent the Agency can provide the information requested. Upon the making of that determination, the person making the request will be promptly so informed. Copies of the releasable documents will be made available promptly thereafter upon receipt of applicable fees and charges as set forth in § 212.35.

(b)(1) In unusual circumstances, USAID may not be able to determine the availability of the requested documents within ten working days, in which event the person making the request will be informed by written notice of the delay, the reasons for the delay and the date on which a determination may be expected. In this context, the term “unusual circumstances” refers to the following situations:

(i) When there is a need to search for and collect the requested records from field facilities or other establishments that are separate from the office processing the request;

(ii) When there is a need to search for, collect, and appropriately examine a voluminous amount of separate and distinct records which are sought in a single request; or

(iii) When there is a need for consultation (which will be conducted with all practicable speed) with another agency having a substantial interest in the determination of the request or among two or more components of the Agency, each having substantial subject-matter interest therein.

(2) The maximum time in making a determination of availability, in the event of such unusual circumstances, will be twenty working days from receipt of the request. In the event that only part of the permissible ten working days extension is used, then USAID reserves the right, if necessary, to use any remainder of such time for the determination of an appeal, if one is made.

(c) If a request is made to USAID for material that is controlled or held by another agency, the person making the request will be immediately notified that USAID does not have or control the requested material and he/she will be advised of the name of the controlling agency and of the address from which the material may be requested, unless the other agency has, by public regulation, delegated the release authority to USAID. If release authority has been delegated, USAID will follow the procedures authorized by the delegation in determining whether to release the information. If a request for material is referred to USAID from another agency, the time period for determination of release of the information will not start until the request is received by the Chief, Office of Customer Outreach and Oversight Staff; and the person making the request will be immediately notified of the referral and of the date the request was received in USAID. USAID will not accept referral of requests unless and until the Chief, Customer Outreach and Oversight Staff, or his/her designee, determines that the material requested is actually within the scope and control of the release authority of USAID.

(d) If only a part of a record is exempt from disclosure, then any reasonably segregable portion of such record will be furnished after deletion of the portions which are exempt, provided that the segregable portion constitutes an intelligible record which is not distorted out of context or contradictory

to the substance of the entire record before segregation.

§ 212.35 Schedule of fees and method of payment for services rendered.

(a) *Definitions.* (1) *Direct costs* means those expenditures which the Agency actually incurs in searching for and duplicating (and in the case of commercial requesters, reviewing) documents in order to respond to a FOIA request.

(2) *Search* includes all time spent looking for material that is responsive to a request, including page-by-page or line-by-line identification of material within documents. Line-by-line search will not be done when duplicating an entire document would prove the less expensive and quicker method of complying with a request. ("Search" for this purpose is distinguished from "review" (see paragraph (a)(4) of this section).

(3) *Duplication* refers to the process of making a copy of a document available to the FOIA requester. Copies can take the form of paper copy, microfilm or audiovisual materials (among others) and will be in a form that is reasonably usable by requesters.

(4) *Review* refers to the process of examining documents located in response to a commercial use request (see paragraph (a)(5) of this section) to determine whether any portion of any document located is permitted to be withheld. It also includes processing any documents for disclosure, e.g., doing all that is necessary to redact those documents of exempt material and otherwise preparing them for release. Review does not include time spent resolving general legal or policy issues regarding the application of exemptions.

(5) *Commercial use request* refers to a request from or on behalf of one who seeks information for a use or purpose that is related to commerce, trade, or the profit interest of the requester or of the person on whose behalf the request is made. In determining whether a requester properly belongs in this category, the Agency will determine the use to which a requester will put the documents requested. Where the Agency has reasonable cause to doubt the use to which a requester will put the records sought, or where that use is

not clear from the request itself, the Agency may seek additional clarification before assigning the request to a specific category.

(6) *Educational institution* refers to a preschool, a public or private elementary or secondary school, an institution of graduate higher education, an institution of undergraduate higher education, an institution of professional education, or an institution of vocational education which operates a program or programs of scholarly research.

(7) *Non-commercial scientific institution* refers to an institution that is not operated on a "commercial" basis as that term is referenced in paragraph (a)(5) of this section and which is operated solely for the purpose of conducting scientific research, the results of which are not intended to promote any particular product or industry.

(8) *Representative of the news media* refers to any person actively gathering news for an entity that is organized and operated to publish or broadcast news to the public. The term "news" means information that is about current events or that would be of current interest to the public. Examples of news media entities include television or radio stations broadcasting to the public at large, and publishers of periodicals (but only in those instances when they can qualify as disseminators of "news" who make their products available for purchase or subscription by the general public). These examples are not intended to be all-inclusive. Moreover, as traditional methods of news delivery evolve (e.g., electronic dissemination of newspapers through telecommunications services), such alternative media would be included in this category. In the case of "freelance" journalists, they may be regarded as working for a news organization if they can demonstrate a sound basis for expecting publication through such an organization, even though not actually employed by it. A publication contract would be the clearest evidence, but the Agency may also look to the past publication record of the requester in making this determination.